



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

J. Robert Hume, III
U.S. Army Corps of Engineers
Norfolk District Regulatory Branch
803 Front Street
Norfolk, Virginia 23510-1096

30 MAR 2010

Re: PCN NAO-2009-00815, Paramount Coal Company Virginia, LLC., Dry Fork Surface Mine, NWP 49, Wise County, Virginia

Dear Mr. Hume:

The U.S. Environmental Protection Agency (EPA) has reviewed the preconstruction notification for Paramount Coal Company Virginia, LLC., for a Nationwide Permit (NWP) 49 involving impacts to approximately 3,880 linear feet of waters of the United States in conjunction with the construction, operation, and reclamation of the 630 acre Dry Fork Surface Mine. Based on the information provided in the Preconstruction Notification (PCN), EPA has concerns regarding claim of self-mitigation, lack of mitigation plan, need for further documentation and sampling, and the monitoring of the compensation for impacts.

The proposed mine site is located in Wise County, Virginia, approximately 4 miles southeast of the community of Coeburn, off State Routes 660 and 658. The proposed impacts to five unnamed tributaries are within the Clinch River watershed, which boasts one of the most highly biological diverse aquatic systems in North America including 18 federally endangered mussels and five federally endangered or threatened fish. One unnamed tributary flows directly to the Clinch River. Two unnamed tributaries flow to Dry Fork which flows to Bull Run, which flows to the Clinch River. Two unnamed tributaries flow to Lick Log Branch which flows to the Guest River, which flows to the Clinch River. The Clinch River is within the Upper Tennessee watershed. The proposed permit area is approximately 630 acres, and according to the applicant, the entire mine site is considered pre-SMCRA or Abandoned Mine Land (AML).

The proposed impacts to jurisdictional aquatic resources are to five unnamed intermittent streams totaling approximately 3,640 linear feet of stream channel and one ephemeral reach 240 linear feet in length in addition to 0.6 acres of wetlands. The impacts are a result of excavation during the mining process. No hollow fills are proposed for this project. The excess overburden generated during the proposed mining will be backstacked along exposed highwalls. Sediment ponds are proposed to be situated in upland area out of jurisdictional waters. A thorough alternatives analysis was not provided in the PCN.

The applicant claims all the jurisdictional areas within the proposed permit boundary area provide no viable habitat for aquatic species and do not qualify as functional streams. According to the applicant the jurisdictional reaches consist of unnatural ditches caused by the pre-SMCRA



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mining fed by coal seam seeps concentrating on flat bench terrain. According to the applicant, the waters lack substrate and provide no viable habitat for aquatic species and have little or no environmental value and may be detrimental to downstream aquatic resources due to their unnatural setting. The applicant determined that biological and physical assessments used to gauge aquatic resource quality were not considered applicable, subsequently none were carried out. Additionally, the applicant claims the re-mining of the site will be self-mitigating by reclaiming abandoned highwalls and eliminating or stabilizing the flows originating from the area and reducing sediment delivery to receiving streams. Upon reclamation, the flows originating from the seeps will return to ground water and precipitation will be conveyed to receiving streams via over land sheet flow. No compensatory mitigation plan (CMP) was submitted in the PCN.

As stated in the 2007 Nationwide Permit 49 description: “the permittee must clearly demonstrate to the District Engineer that the reclamation plan will result in a net increase in aquatic resource functions.” While it is conceptually agreed that reclamation of AML will likely lead to environmental benefit, the applicant’s PCN has not provided a clear demonstration of net increase in aquatic functions as a result of this proposed project. The application focuses solely on sediment removal for anticipated environmental improvement, but does not provide baseline data or expected sediment load removal upon reclamation. EPA recommends that such baseline analysis be conducted and should include, but is not limited to, examining other effluents besides sedimentation and actual measurements of current conditions of effluents, etc. Additionally, to ensure that the proposed project is resulting in a net increase of aquatic resource function and the protection of downstream water quality, EPA suggests that the CWA Section 404 permit be conditioned to require appropriate instream chemical and biological monitoring and monitoring of the effluent for conductivity, TDS, TSS, selenium, sulfates, and chlorides.

EPA recommends the applicant perform the biological, physical, chemical, and hydrological assessments for the aquatic resources proposed to be impacted. While the stream channels may be degraded, EPA believes that the data should be provided to demonstrate the assertions put forth by the applicant. Fully documented and fully vetted applications provide for better and environmentally accurate permits. Without the baseline monitoring, it remains unclear if the requirements and intent of the NWP 49 will be successfully met.

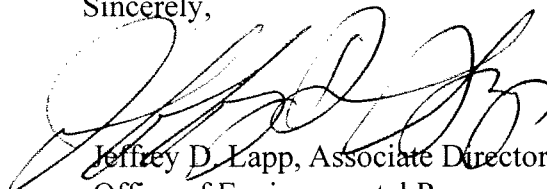
The applicant claims the proposed project is self-mitigating. In most cases, reclaiming AML is environmentally beneficial. However, the PCN does not provide sufficient detailed information to support the applicant’s position. EPA is skeptical of the self-mitigation without further supporting documentation. Therefore, a comprehensive mitigation plan should be developed utilizing baseline gathering methodologies as suggested above. As there is no stream restoration plan or reclamation design, EPA requests a plan for stream design, placement and methodology for stream restoration and creation of stream channels to convey water to receiving streams as well as provide habitat for aquatic species. The permit should also be conditioned to include observable and measurable mitigation success criteria with biological, chemical, and physical components and a monitoring plan to determine if success criteria are being met.

While EPA supports reclamation of abandoned mine land for benefit of the environment and aquatic resources, we believe additional considerations to mitigation, documentation and



monitoring should be utilized to ensure the reclamation meets the expected environmental benefits and gains in water quality and habitat as required by NWP 49. Thank you for the opportunity to provide comments regarding this proposal. Should you have any questions please feel free to contact Mr. Mark Douglas at 215-814-2767 or by email at douglas.mark@epa.gov.

Sincerely,



Jeffrey D. Lapp, Associate Director
Office of Environmental Programs

